

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JEAN M. HEINEN,	)	
	)	No. CV-11-351-JPH
Plaintiff,	)	
	)	ORDER GRANTING DEFENDANT'S
v.	)	MOTION TO DISMISS
	)	
MICHAEL J. ASTRUE, Commissioner	)	(ECF No. 9)
of Social Security,	)	
	)	
Defendant.	)	
	)	
	)	

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On September 28, 2011, Plaintiff filed a complaint, ECF No. 4. The parties have consented to proceed before a magistrate judge, ECF No. 8. On January 10, 2012, Defendant moved to dismiss for failure to state a claim pursuant to Fed. Rule. Civ. P. 12(b)(6), based on Plaintiff's alleged failure to exhaust administrative remedies. Defendant asked to Court to delay entry of a scheduling order pending its decision on the motion to dismiss. ECF Nos. 9 at 1-2 and 10 at 2.

The deadline for responding to the motion has passed and Plaintiff has not filed a response. LR 7.1(e) provides that a failure to timely file a memorandum of points and authorities in opposition to any motion may be considered by the Court as consent on the part of the party failing to file such memorandum to the entry of an order adverse to the party in default.

The record shows Plaintiff made an untimely request for a

1 hearing before an ALJ. A timely request was due by June 25, 2010.  
2 Plaintiff filed her request September 20, 2010 (ECF No. 10 at 5).

3 This Court's review is limited by 42 U.S.C. § 405 (g) and (h)  
4 to final decisions after a hearing. As there has been no hearing,  
5 this is an agency decision not subject to judicial review.

6 Accordingly, for the above-stated reasons,

7 **IT IS ORDERED** that the Defendant's motion to dismiss the  
8 complaint (**ECF No. 9**) is **granted**. The case is dismissed and the  
9 file shall be closed.

10 DATED this 30th day of January, 2012.

11 s/ James P. Hutton  
12 JAMES P. HUTTON  
13 UNITED STATES MAGISTRATE JUDGE  
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